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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,382	08/19/2003	James D. Marshall	TN-09323	3601
7590		08/09/2005	EXAMINER	
Black & Decker Inc.		AL NAZER, LEITH A		
701 E. Joppa Road, TW-199		ART UNIT		
Towson, MD 21286		2821		

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/643,382

**Applicant(s)**

MARSHALL ET AL.

**Examiner**

Leith A. Al-Nazer

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14 is/are allowed.
- 6) ☒ Claim(s) 1,2 and 6-13 is/are rejected.
- 7) ☒ Claim(s) 3-5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 03 June 2005.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Drawings*

1. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings filed on 19 August 2003 are informal and are suitable only for examination purposes. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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3. Claims 1, 2, and 6-8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 9, and 10 of U.S. Patent No. 6,914,930. Although the conflicting claims are not identical, they are not patentably distinct from each other because the same structural elements are recited in claims 1, 2, and 6-8 of the present application as are recited in claims 1-3, 9, and 10 of U.S. Patent No. 6,914,930, except that claims 1-3, 9, and 10 of U.S. Patent No. 6,914,930 recite that the pendulum has a center of gravity. It is well known that all useful pendulums have a center of gravity because if they did not, then they would be unstable and mechanically unreliable.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 9-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 recites "the housing having at least one horizontal reference surface". This phrase is vague and unclear. Therefore, examiner is unsure of what structure applicant is attempting to claim.

Claim 12 recites "a housing having a substantially vertical reference surface". This phrase is vague and unclear. Therefore, examiner is unsure of what structure applicant is attempting to claim.

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Claim 13 recites "a housing having a substantially horizontal reference surface".

This phrase is vague and unclear. Therefore, examiner is unsure of what structure applicant is attempting to claim.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,202,312 to Rando.

With respect to claim 12, Rando teaches a laser level disposable on a reference surface (figure 8) comprising: a housing (20) having a substantially vertical reference surface; a first laser diode disposed within the housing for emitting a first laser beam along a first path (30); a first lens (28) disposed within the housing in the first path for converting the first laser beam into a first planar beam, the first planar beam forming a first line on the first reference surface, the first line being substantially parallel to the vertical reference surface (figure 8); a second laser disposed within the housing for emitting a second laser beam along a second path (30a); and a second lens (figure 8) disposed within the housing in the second path for converting the second laser beam into a second planar beam, the second planar beam forming a second line on the first

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reference surface, the second line being substantially perpendicular to the vertical reference surface.

With respect to claim 13, Rando teaches a laser level disposable on a first reference surface (figure 8) comprising: a housing (20) having a substantially horizontal reference surface; a first laser diode disposed within the housing for emitting a first laser beam along a first path (30); a first lens (28) disposed within the housing in the first path for converting the first laser beam into a first planar beam, the first planar beam forming a first line on the first reference surface, the first line being substantially perpendicular to the horizontal reference surface (figure 8); a second laser diode disposed within the housing for emitting a second laser beam along a second path (30a); and a second lens (figure 8) disposed within the housing in the second path for converting the second laser beam into a second planar beam, the second planar beam forming a second line of the first reference surface, the second line being substantially parallel to the horizontal reference surface.

***Allowable Subject Matter***

8. Claims 3-5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The following is a statement of reasons for the indication of allowable subject matter:

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Dependent claim 3 recites limitations not claimed in U.S. Patent 6,914,930 to Raskin et al. Specifically, claim 3 recites the lock mechanism comprising a pivotable lock movable between a first position contacting the pendulum and a second position bypassing the pendulum.

10. Claim 14 is allowed.

11. The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record fails to teach or suggest one or more of the limitations found in independent claim 14. Goodrich '319 and Rando '312 both show the state of the art with respect to laser level systems. With respect to claim 14, the prior art of record, specifically Goodrich and Rando, fails to teach or suggest a body having a scale thereon and a housing rotatably disposed on the body.

#### ***Communication Information***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leith A. Al-Nazer whose telephone number is 571-272-1938. The examiner can normally be reached on Monday-Friday, 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong can be reached on 571-272-1834. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LA



**HOANG V. NGUYEN  
PRIMARY EXAMINER**